

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA . CRIMINAL NO. 16-10179-IT  
. .  
V. . BOSTON, MASSACHUSETTS  
. JUNE 21, 2016  
ALEX HERNANDEZ .  
Defendant .  
• • • • • . . . . .

TRANSCRIPT OF ARRAIGNMENT  
BEFORE THE HONORABLE JENNIFER C. BOAL  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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Court Reporter:

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**MARYANN V. YOUNG**  
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1 (Case called into session)

2 (11:23:44 AM)

3 THE CLERK: United States District Court for the  
4 District of Massachusetts is now in session. The  
5 Honorable Jennifer C. Boal presiding. You may be seated.  
6 Today is June 21, 2016. We're on the record in the matter  
7 of the United States v. Alex Hernandez, Case No. 16-cr-  
8 10179.

9 Will counsel please identify themselves for the  
10 record?

11 MR. DELLANO: Good morning, Your Honor, Jordi  
12 deLlano on behalf of the United States.

13 MS. CONRAD: Good morning, Your Honor, Miriam  
14 Conrad for Mr. Hernandez.

15 THE COURT: Good morning. Mr. deLlano could you  
16 please state the maximum potential penalties.

17 MR. DELLANO: Maximum potential penalties for  
18 the charged offense are a period of imprisonment of five  
19 years, \$250,000 fine, a period of supervised release of  
20 three years and a mandatory \$100 special assessment.

21 THE COURT: Mr. Hernandez, if you could please  
22 stand? Have you had the opportunity to review the  
23 indictment with your attorney?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand generally the

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**(508) 384-2003**

1 charges that are pending against you?

2 THE DEFENDANT: Yes.

3 THE COURT: Are you prepared to enter a plea  
4 today?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you waive the reading of the  
7 indictment out loud?

8 THE DEFENDANT: Yes.

9 THE COURT: Mr. York, if you could please take  
10 Mr. Hernandez' plea.

11 THE CLERK: Mr. Hernandez, as to Count 1 of the  
12 indictment, charging you with threats against the  
13 President, a violation of Title 18, U.S.C. Section 871(a),  
14 how do you plead, guilty or not guilty?

15 THE DEFENDANT: Not guilty.

16 THE CLERK: Thank you. You may be seated.

17 THE COURT: Ms. Conrad, do you wish to receive  
18 automatic discovery?

19 MS. CONRAD: I do, Your Honor.

20 THE COURT: And Mr. deLlano, how long will it  
21 take the government to produce automatic discovery?

22 MS. DELLANO: Your Honor, I'd ask for the full  
23 28 days, July 19, 2016, just because there's a fair  
24 amount. I put on the record that I'll make all efforts to  
25 get it to Ms. Conrad in advance of that.

1 MS. CONRAD: Thank you.

2 THE COURT: So, Mr. York, would you please  
3 schedule an initial status conference for six weeks out?

4 THE COURT: The Court's available on the morning  
5 of August 2<sup>nd</sup>. That's a Tuesday at 11 a.m.

6 MR. DELLANO: That should be fine, Your Honor.

7 MS. CONRAD: That's fine. Thank you.

8 THE COURT: And Ms. Conrad, does your client  
9 agree to excluding the time until that I, I know we  
10 have, we have both the Title 18 Speedy Trial Act and then  
11 the Interstate Agreement on Detainers, Speedy Trial Act.

12 MS. CONRAD: So, you know, I'm sorry. I did not  
13 address that with him. I would be inclined to exclude it  
14 under the Speedy Trial Act but not under the IAD.

15 THE COURT: Do you want a moment or--

16 MS. CONRAD: I'm sorry?

17 THE COURT: Are you agreeing to that or do you  
18 need to talk to your client?

19 MS. CONRAD: Let me talk to my client for a  
20 second.

21 THE COURT: Okay.

22 MS. CONRAD: I apologize, Your Honor.

23 THE COURT: That's all right.

24 PAUSE

25 MS. CONRAD: You know, Your Honor, I'm sorry but

1 the, perhaps I could confer with Mr. deLlano and we could  
2 either submit something in writing after the fact. I  
3 just, you know, I'm familiar with certainly this Court's  
4 rules and about the Speedy Trial Act but an exclusion for  
5 production of discovery, I'm not sure is a valid exclusion  
6 under the IAD.

7 MR. DELLANO: Your Honor, in that case I, I'll  
8 have the discovery ready by the first and ask that we move  
9 up the initial status conference as soon as possible after  
10 that?

11 THE COURT: So, Mr. York, what do we have?

12 THE CLERK: The Court is available on July 21<sup>st</sup>,  
13 that's a Thursday at 11 a.m.

14 THE COURT: Thank you.

15 MR. DELLANO: I'll just point out, Your Honor,  
16 that it puts us in a disadvantaged position as a result.

17 THE COURT: Yes, I think you need it even  
18 sooner.

19 MR. DELLANO: Yes.

20 THE COURT: How about the 14<sup>th</sup>?

21 THE CLERK: The Court could be available on the  
22 12<sup>th</sup> at 11 a.m.

23 MR. DELLANO: That's fine, Your Honor.

24 MS. CONRAD: I'm sorry. Let me just check.

25 That's fine.

1                   THE COURT: So there's one issue with respect  
2 to excluding the time and then also with respect to  
3 detention, and I know the parties had filed in response to  
4 my request I appreciated a joint response. So I  
5 understand in terms of the *United States v. King* that we  
6 delay a detention hearing and that makes sense. One of  
7 the points I'm a little bit stuck on is technically my  
8 order telling the marshals where they are to house Mr.  
9 Hernandez, and my understanding is that Ms. Conrad wants  
10 him to remain in federal custody, but I guess I'm looking  
11 at the Speedy Trial Act. It looks like I should probably  
12 use the term temporary custody rather than, I would  
13 usually say remanded to the custody of the United States  
14 Marshal Service. Does that make sense to you, Mr.  
15 deLlano?

16                   MR. DELLANO: I think that makes perfect sense.  
17 By, by failing, by not waiving his rights including his  
18 anti-shuttling rights--

19                   THE COURT: He's supposed to stay here.

20                   MR. DELLANO: --then he stays in temporary  
21 custody.

22                   MS. CONRAD: And I think that's appropriate.  
23 Also, Your Honor, I might suggest respectfully, a  
24 reference to by virtue of the Interstate Agreement on  
25 Detainers--

1                   THE COURT: Okay.

2                   MS. CONRAD: --so it's clear that he is still  
3 serving a state sentence, he's just being lodged  
4 temporarily for the pendency of this case.

5                   THE COURT: Okay, and then my other question  
6 because I need to talk to Judge Talwani and let her know  
7 that this case would potentially be tried sooner than in  
8 the normal course, and that they look at the Interstate  
9 Agreement on Detainers and I am the first to admit I have  
10 never found it an easy statute to read and understand, it  
11 looks as if there are two ways that the defendant could  
12 come to, well at least in this case under, to federal  
13 court and invoke the Interstate Agreement on Detainers or  
14 this statute is invoked. There is Article 3 where it  
15 looks like the prisoner himself is in another custody, in  
16 this case it would be state custody and asks to come to  
17 federal court to answer on the charges and then Article 4  
18 where the government writes the defendant into federal  
19 court. My, at least reading of the statutes in this  
20 situation here would suggest that he falls under Article 4  
21 and why that's material in terms of the trial, it looks as  
22 if under Article 3 it's 180 days and Article 4 is 120  
23 days.

24                  MR. DELLANO: It's my understanding of it as  
25 well, Your Honor.

1                   THE COURT: So your understanding is that he's  
2 entitled to a trial within 120 days of whatever the  
3 triggering mechanism is?

4                   MR. DELLANO: That's correct, Your Honor.

5                   MS. CONRAD: I'm sorry. If it's Article 4, then  
6 I thought that it was 180 days?

7                   MR. DELLANO: I thought it was 180 days when the  
8 defendant is in the other jurisdiction and elects on his  
9 own to come. Maybe we should--

10                  MS. CONRAD: No, I thought it was the other way  
11 around.

12                  MR. DELLANO: --maybe we should--

13                  MS. CONRAD: I don't know. Maybe I'm--

14                  THE COURT: I have it right in front of me and  
15 of course I do not un--

16                  MS. CONRAD: All right, well I'm going from  
17 memory so I defer.

18                  THE COURT: Okay. Okay, so Article 3 says he  
19 shall be brought to trial within 180 days--

20                  MS. CONRAD: Okay.

21                  THE COURT: --after he shall have cause to be  
22 delivered to the--

23                  MS. CONRAD: I just mixed up the provisions. In  
24 that case I agree its Article 4 certainly and then it  
25 would be 120 days.

1                   THE COURT: Okay, all right and so I'll make  
2 Judge Talwani aware of that as well.

3                   MS. CONRAD: And is that, Your Honor, is that  
4 120 days from coming into federal custody or 120 days from  
5 indictment? I can look at that on my own.

6                   THE COURT: Yeah.

7                   MS. CONRAD: It just occurred to me that--

8                   THE COURT: Here it is. So in respect of any  
9 proceeding made possible by this article, trial shall be  
10 commenced within 120 days of the arrival of the prisoner  
11 in the receiving state. So it sounds like from the  
12 initial appearance.

13                  MS. CONRAD: Right, thank you.

14                  THE COURT: All right. All right, anything  
15 else, Mr. deLlano?

16                  MR. DELLANO: Nothing further from the  
17 government.

18                  THE COURT: And Ms. Conrad?

19                  MS. CONRAD: Thank you, nothing.

20                  THE COURT: All right.

21                  MR. DELLANO: Thank you.

22 (Court adjourned)

23 (11:34:27 AM)

24

25

1 CERTIFICATION

2 I, Maryann V. Young, court approved transcriber,  
3 certify that the foregoing is a correct transcript from  
4 the official digital sound recording of the proceedings in  
5 the above-entitled matter.

6

7 /s/ Maryann V. Young

July 11, 2016

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